IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.384 OF 1990

Peerappa Malkappa Waghdarikar,)
Age 66 years, Occupation,)
Residing at 104, Shukrawar Peth,)
Solapur.)
Since deceased, through the legal)
heirs & representatives :)

1-A) Shankar Peerappa Waghdarikar,)

1-B) Nandkumar Peerappa Waghdarikar,)
both residing at 756,)
West Mangalwar Peth,)
Solapur.)..Petitioners
(Org.Defendants)

Versus

1. Narayanrao Bhimrao Dudhankar,)
since deceased through the)
legal heirs and representatives)

1(a) Sakhubai Narayanrao Dudhankar,)
Age - 67 years,)

1(b) Rajendra Narayanrao Dudhankar,)
Age 49 years,)

1(c) Ashok narayanrao Dudhankar,)
Age 46 years,)

1(d) Suresh Narayanrao Dudhankar,)
Age 30 years,)

1(e) Satish Narayanrao Dudhankar,)

All residing at 104,)
Shukrawar Peth, Solapur.)

2. Mahadeo Perrappa Waghdarikar,)
R/o.at 756, West Mangalwar Peth,)
Solapur.)
(In capacity of heir of the)
deceased petitioner.)).. Respondents
(Org.Plaintiff)

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Shri M.R.Deshpande for the petitioners.

Shri Jaydeep Deo for Shri P.K.Dhakephalkar for
respondent Nos.1(a) to 1(e).

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 7th SEPTEMBER, 2004.

ORAL JUDGMENT:

1. Heard. Perused the records.

2. The petitioner challenges the judgment and order dated 30th November, 1989 passed by the Additional District Judge, Solapur, in Civil Appeal No.674 of 1986 as well as the judgment and order dated 17th October, 1986 passed by the Joint Civil Judge, Junior Division, Solapur, in Regular Civil Suit No.987 of 1980. Both the judgments relate to the decree of eviction against the petitioner on the ground of bonafide need of the premises to the respondent as well as acquisition of an alternative suitable accommodation by the petitioner.

3. The facts of the case disclose that the respondent owns a house bearing No.104 in the property bearing C.T.S.No.3891/A/1 situated at Shukrawar Peth, consequent to the purchase thereof, since 12th February, 1980 from the erstwhile owner of the property viz. Ramchandra Shripad Patankar. It is the case of the respondent that the said house was purchased by him for his personal use and occupation, and, therefore, the proceedings were initiated for eviction of the petitioner, who is a tenant in

relation to the premises on the ground floor as well as the part of the premises of the 2nd floor. The suit was filed on various grounds including the ground pertaining to the bonafide need of the premises and acquisition of suitable alternate accommodation by the petitioner, and default in payment of rent. Both the Courts below, on the analysis of evidence on record, have arrived at the concurrent findings in relation to the bonafide need of the premises to the respondent as also the acquisition of suitable alternative accommodation by the petitioner, while rejecting the ground relating to the default in payment of rent.

4. While admitting the present petition, the challenge to the impugned judgments was allowed only in relation to the shop premises while rejecting the challenge in relation to the residential premises. In other words, the impugned judgment and decree of eviction against the petitioner as far as the residential premises are concerned, the same was confirmed while the challenge was kept open only in relation to the shop premises. Accordingly, the matter was heard only in relation to the shop premises in occupation of the petitioner.

5. Upon hearing the learned advocates for the parties and on perusal of the records, it is seen, as already observed above, both the Courts have arrived at the concurrent findings to the effect that the

petitioner is already having his own bungalow in Gurusidheshwar Housing Society, Vishram Nagar, and it is named as "Savitri Niwas". It has also been held that the phone connection which was in the name of the petitioner in the suit premises has already been transferred to another premises bearing House No.756 at Mangalwar Peth. The finding is also to the effect that the petitioner has stopped running the business in the suit premises and has shifted the same to his own premises. These concurrent findings, which have been arrived at on the basis of the evidence on record, apparently disclose that the petitioner is in possession of the two different premises, not only for residential purposes but also for the business purposes. The findings arrived at by both the Courts below also disclose that the premises in question have been kept closed for long period and are not being used by the petitioner. These findings, apart from having been arrived at on analysis of the evidence on record, are findings of fact. The petitioner has not been able to establish that those findings are in any manner either perverse or that they are contrary to the materials on record. Apparently, the case in relation to the bonafide need of the premises to the respondent as well as acquisition of another alternative premises by the petitioner has been clearly established by cogent evidence on record, and, therefore, the said findings do not warrant interference in any manner in writ jurisdiction.

6. Yet another contention which is sought to be raised is that the alternate premises belonging to the petitioner are already in occupation of the tenant of the petitioner. Inspite of repeated query with the learned advocate for the petitioner, it was not revealed as to since when those premises were let out by the petitioner to the third party. It is to be noted that it is undisputed fact that the petitioner is a tenant in relation to the suit property since 1948 whereas the petitioner had acquired alternate premises after the year 1971. In other words, the lease, which is stated to have been created by the petitioner in respect of his premises, cannot be prior to the year 1972. Acquiring an alternate premises and then letting it out to third party, knowing it well that the petitioner himself has been tenant in relation to another's property, and acquisition of an alternate premises can be a ground for eviction of the petitioner from such premises in his occupation, cannot be a justification or an answer to the suit for eviction by the landlord against the petitioner for his eviction on the ground of acquisition of alternate premises. The alleged nuisance sought to be created by the petitioner itself cannot be pleaded to be a defence or an answer to the suit for eviction on the ground of acquisition of an alternate premises. If the petitioner himself has been responsible to induct some third party in the alternate premises acquired by

him while he himself was tenant in respect of other's property, and for such act on the part of the petitioner, the landlord cannot be blamed and certainly such a defence cannot be entertained to defeat the bonafide claim of the landlord.

7. Viewed from this angle, merely because the petitioner has not been able to acquire eviction of a tenant from the premises leased out by him that would not entitle the petitioner to defeat the right accrued in favour of the respondent to seek eviction of the petitioner under the provisions of law comprised under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

8. For the reasons stated above, therefore, there is no case for interference in the impugned judgment and orders, and hence, the petition is dismissed.

Rule discharged with no order as to costs.